

No. 20-\_\_\_\_\_

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**In the United States Court of Appeals  
For the Ninth Circuit**

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STEVE ODDO, RAJENE REARDON, ANTHONY LASALA, LINDA LAMM, KEITH  
KIMBALL, NORMAN KLINGE, and DAN GALLAGHER,  
on behalf of themselves and all others similarly situated,  
*Plaintiffs-Petitioners,*

v.

ARCOAIRE AIR CONDITIONING AND HEATING, CARRIER CORPORATION, BRYANT  
HEATING AND COOLING SYSTEMS, COMFORTMAKER AIR CONDITIONING &  
HEATING, INTERNATIONAL COMFORT PRODUCTS LLC, and UNITED  
TECHNOLOGIES CORPORATION,  
*Defendants-Respondents.*

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PAUL CORMIER and NICHOLAS SHONER,  
on behalf of themselves and all others similarly situated,  
*Plaintiffs-Petitioners,*

v.

CARRIER CORPORATION,  
*Defendant-Respondent.*

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On Petition for Permission to Appeal in Consolidated Actions in the C.D.Cal.  
Nos. 8:15-cv-01985-CAS(Ex); 2:18-cv-07030-CAS(Ex)

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**MOTION TO SEAL  
PETITION FOR PERMISSION TO APPEAL  
UNDER FEDERAL RULE OF CIVIL PROCEDURE 23(f)**

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Plaintiffs-petitioners Steve Oddo, Norman Klinge, and Paul Cormier respectfully move under Circuit Rule 27-13(e) and Federal Rule of Appellate Procedure 27 to seek leave to file portions of their Petition for Permission to Appeal Under Federal Rule of Civil Procedure 23(f) (“Petition”) and portions of the underlying district court’s opinion under seal.

The district court below sealed the portions of its opinion and, therefore, Plaintiffs seek to seal those same portions here. Plaintiffs do not seek to seal any additional portions of the court’s opinion.

Plaintiffs also seek to seal portions of their Petition that refer to or quote information that Defendants<sup>1</sup> and Emerson Climate Technologies, Inc., a nonparty, in the case have deemed to contain or reflect highly sensitive, competitive business information such as trade secrets, current business or strategic plans, proprietary cost and pricing information, contract negotiations, or other information of direct competitive significance, and which were designated “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Protective Order entered by the district court below. These documents include an internal technical white paper (Petition, at 4 (ECF No. 219-1)),<sup>2</sup> negotiation communications (*id.* (ECF Nos. 219-

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<sup>1</sup> Arcoaire Air Condition and Heating, Carrier Corporation, Bryant Heating and Cooling Systems, Comfortmaker Air Conditioning & Heating, International Comfort Products, and United Technologies Corporation.

<sup>2</sup> References to the ECF numbers are to the *Oddo* docket, case number 8:15-cv-01985.

8, 219-18), inventory records (*id.* (ECF No. 219-9)), internal strategy discussions (*id.*, at 5 (ECF No. 252-7)), and internal testing results and analysis (*id.*, at 4 (ECF Nos. 219-2, 219-7)).

Defendants and Emerson only agreed to produce those documents under the stipulated protective order issued by the magistrate judge in this case (ECF No. 73) and designated those documents as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” pursuant to that order. *See, e.g., Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135-36 (9th Cir. 2003). Moreover, the district court granted Plaintiffs’ and Defendants’ applications to file those documents under seal in connection with their respective briefing, and it filed under seal portions of its opinion. (ECF Nos. 218, 251, 291, 292.)

By virtue of the designations, Defendants and Emerson have represented that there is significant potential for irreparable injury in the absence of the relief requested and if the information from those documents is publicly disclosed. If this Court requires a more specific showing with respect to the documents at issue at this stage, Plaintiffs can notify and request Defendants and Emerson make such a showing to this Court.

Further, Plaintiffs only request the least restrictive scope of sealing pursuant to Circuit Rule 27-13(e). The request is limited only to the portions of the Petition and opinion that Defendants and/or Emerson represented in the court below require

filing under seal, and Plaintiffs have filed, concurrent with this motion, a redacted version of the Petition and the district court's opinion. Accordingly, only those portions of the Petition and opinion at issue in this motion will be protected from disclosure, while the remainder of the Petition and opinion will be publicly disclosed.

For the foregoing reasons, Plaintiffs request that the Court grant this motion and permit them to file under seal the unredacted version of the Petition and unredacted version of the district court's opinion. Plaintiffs request that the redacted versions of the Petition and underlying order, submitted concurrently with this motion, be publicly filed.

Respectfully submitted this 1<sup>st</sup> day of June 2020.

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### **CERTIFICATE OF COMPLIANCE**

I certify that this motion complies with Fed. R. App. 27(d)(2)(A) because it contains 560 words, excluding the items exempted by Fed. R. App. P. 32(f).

I certify that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionately spaced typeface using Microsoft Word and Times New Roman 14-point font.

Dated: June 1, 2020

/s/Timothy N. Mathews  
Timothy N. Mathews

## CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2020, I filed the foregoing motion with the Clerk of the United States Court of Appeal for the Ninth Circuit via CM/ECF system.

I further certify that on this same day, after receiving written consent from counsel,

I served the motion by sending copies via electronic mail, in compliance with Fed.

R. App. P. 25(c)(2):

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